

### **REMARKS**

In response to the Final Office Action mailed June 1, 2006, Applicants respectfully request reconsideration. Claims 1-50, 52 and 127-181 were pending. Claims 137-181 are allowed and claims 24, 50, 129, 130, 132 and 133 have been indicated to be allowable if re-written into independent form. Claims 1-23, 25-49, 52, 127, 128, 131 and 134-136 stand rejected. Applicants respectfully traverse these rejections. In addition, claims 182-199 have been added. Claims 1, 27, 127, 137, 160 and 182 are independent. No new matter has been added.

#### ***Claims Indicated Allowable***

The Applicants thank the Examiner for indicating that claims 137-181 are allowed and that, claims 24, 50, 129, 130, 132 and 133 would be allowable if re-written in independent form including all of the limitations of the base claim and any intervening claims.

Applicants have elected to not re-write claims 24, 50, 129, 130, 132 and 133 at this time, as the Applicants believe that, for the reasons set forth below, the independent claims from which these claim depend are allowable.

#### ***Interview Summary***

The Applicants' undersigned representative, Neil Ferraro, thanks Examiner Stashick for the courtesy extended during a Telephone Interview held on June 15, 2006 wherein the rejection of the claims over Datson in view of Pierre was discussed. Also discussed was the Applicants intention to add new claims directed to a lace tightenable boot with zone lacing, where the zones are secured in the upper part of the boot, without also claiming the number of laces involved. A summary of the substance of the Interview is presented in the below discussion.

#### ***Claim Rejections***

Independent claims 1 and 27 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Datson 4,856,207 in view of Pierre et al. 6,467,195. Independent claim 127 stands rejected

under 35 U.S.C. §103(a) as being unpatentable over the references applied to claims 1 and 27 in view of Aufnacker 3,221,384 and Veylupek 5, 755, 044.

In the Office Action, the Examiner recognizes that Datson fails to teach the lower lace having a portion that is disposed in the upper region and therefore relies on Pierre et al that discloses a lace, which is used to secure the lower part of the boot, is secured in the upper part of the boot. The Examiner concludes that it would have been obvious to one of ordinary skill in the art at the time the invention was made to secure the lower lace of Datson in the upper region as taught by Pierre to allow for the user to more easily grab hold of the lace to tighten it. As discussed with the Examiner, the Applicants respectfully disagree and submit that a *prima facie* case of obviousness has not been made.

In this regard, as discussed, Datson teaches a boot having a gaiter “to inhibit entry of water into the boot or shoe if worn across wet and swampy ground or through shallow creeks and rivers or in heavy rain.” (Col. 1, lines 4-9). Continuing, Datson teaches that the boot 10 and gaiter 11 are joined with a layer of waterproof cement 12 circumscribing the boot, with the cement separating the lower laces from the upper laces (Col. 2, lines 32-46), which therefore demarks the border between the lower region and the upper region. Datson specifically teaches that no water should enter the boot via the gaiter. As stated in the Summary section of Datson,

“[i]n this invention, a shoe has a gaiter permanently fixed to it so that a water-tight compartment can be formed by the gaiter in conjunction with its boot or shoe. It is characterised, inter alia, in that the two items, shoe and gaiter, which are normally separate entities, are joined to form a single article of waterproof footwear. This article performs with the full range of functional characteristics of a shoe yet has the added property of being able to inhibit entry of water from the wearer's leg or otherwise entering his shoe, more effectively than any gaiter at present known to the applicant.” (Col. 1, lines 29-40).

As stated in MPEP §2143.01, a *prima facie* case of obviousness is not made where the proposed modification renders the prior art unsatisfactory for its intended purposes. As discussed with the Examiner, if Datson were modified in the manner suggested such that the lower lace were securable at the top in a manner taught by Pierre et al, then the lace would penetrate the gaiter and create a potential leak path into the boot. Clearly, based on the above quoted sections of Datson, a

boot with a potential leak path is undesirable. One of skill in that art would therefore not have been motivated to modify Datson in the manner suggested because doing so would frustrate the purpose of the Datson boot and render it unsatisfactory as a waterproof boot.

The Examiner appreciated this. Accordingly, the Applicants respectfully submit that the rejection of claims 1-23, 25-49, 52, 127, 128, 131 and 134-136 should be withdrawn and the claims should be allowed.

### *New Claims*

As discussed, Applicants intended to add new claims directed to a lace tightenable boot with zone lacing, where the zones are secured in the upper part of the boot, without also claiming the number of laces involved. Therefore, claims 182-199 have been added.

Accordingly, independent claim 182 recites a boot having a boot body with a lower region adapted to cover a foot of a wearer and an upper region adapted to cover at least a portion of a shin of the wearer. A first lacing zone has a lace that is adapted to tighten a first region of the boot. The lace of the first lacing zone has a portion that is disposed in the upper region. A second lacing zone has a lace adapted to tighten a second region of the boot. The lace of the second lacing zone has a portion that is disposed in the upper region. The lace of both the first and the second lacing zones is securable in the upper region to tighten each of the first and second lacing zones.

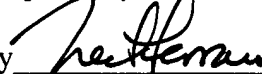
Applicants respectfully submit that claims 182-199 are allowable over the art of record. Notice to that effect is respectfully requested.

**Conclusion**

The application should now be in condition for allowance. A notice to this effect is respectfully requested. If the Examiner believes, after this response, that the application is not in condition for allowance, the Examiner is requested to call the below representative at the telephone number listed below.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicants hereby request any necessary extension of time. The Applicants believe that no fee is due even with the addition of the new claims. If, however, there is a fee occasioned by this response, including an extension fee, please charge Deposit Account No. 23/2825.

Respectfully submitted,

By 

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